United States Bankruptcy Court
District of Massachusetts

In re: Carl J. Hannigan, DEBTOR.	)	Chapter 7 Case No. 02-46969 -JBR

DECISION AND ORDER REGARDING MOTION FOR RECONSIDERATION

This matter having come before the Court on the Motion for Reconsideration of Motion for Sanctions Pursuant to Bankruptcy Rule 9011 [Docket # 83] (the "Reconsideration Motion"), after due consideration of the Creditor's Request for Sanctions Pursuant to Bankruptcy Rule 9011 [Docket #76], and the docket in this case and in the Adversary Proceeding (# 04-04502), the Court hereby makes the following findings of fact and conclusions of law:

1. The Motion for Reconsideration is hereby STRICKEN for failure to comply with Fed. R. Bankr. P. 9011(a). Rule 9011(a) states:

> Every petition, pleading, written motion, and other paper, except a list, schedule, or statement, or amendments thereto, shall be signed by at least one attorney...An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

Because this motion was not signed by the Movant when he filed it with this Court and because the Movant failed to comply with this Court's order of Deficiency dated June 10, 2005, the Motion for Reconsideration is hereby STRICKEN. Even if the Court were to consider the Motion for Reconsideration on its merits, it would be denied.

2. A motion to reconsider is governed by Fed. R. Civ. P. 59(e) made applicable to bankruptcy cases by Fed. R. Bankr. P. 9023 or Fed. R. Civ. P. 60 made applicable to bankruptcy cases by Fed. R. Bankr. P. 9024. "[T]he purpose of a motion for reconsideration is to correct manifest errors of law or fact or to present newly discovered evidence. A party may not submit evidence that is not newly discovered in support of a motion for reconsideration." *Harsco Corp. v. Zlotnicki*, 779 F.2d 906, 909 (3d Cir. 1985), *cert denied*, 476 U.S. 1171 (1986) (citations omitted). A motion for reconsideration is appropriate when there has been a significant change in the law or facts since the submission of the issue to the court; it is not a vehicle for an unsuccessful party to rehash the same facts and same arguments previously presented. *Keyes v. National Railroad Passenger*, 766 F. Supp. 277, 280 (E.D.Pa. 1991).

3. The Motion fails to allege any newly discovered evidence, any manifest error of law, or any significant change in the law that would affect the prior outcome. Indeed the only basis alleged in the Reconsideration Motion is that this Court committed an error of law by finding that the Movant's procedural failure to comply with the "safe harbor" provision of Fed. R. Bankr. P. 9011(c)(1)(A) barred the imposition of sanctions. The Movant's argument is based on his obvious misunderstanding of Rule 9011(c) and its counterpart, Fed. R. Civ. P. 11(c). He argues that the Debtor was required to comply by withdrawing the challenged pleading (in this case, the Debtor's Objection to the Movant's Proof of Claim) and that, in any event, Rule 9011(c) does not apply to the Movant's "petition."

4. Rule 11 was amended in 1993 to include a 21-day "safe harbor" provision with respect to motions filed by parties. Fed. R. Civ. P. 11(c)(1)(A). The safe harbor provision

must be strictly complied with for sanctions to be imposed under the amended Rule. *In re Sammon*, 253 B.R. 672, 678 (Bankr. D.S.C. 2000).[1] Under the safe-harbor provision, a party seeking sanctions must *serve* its motion with the opposing party and only may *file* the motion 21 days later if the challenged pleading is neither withdrawn nor corrected within that time. The purpose of the safe-harbor provision is to provide the opposing party with sufficient time to remedy the alleged wrongs. For this reason, a motion filed with the Court prior to the expiration of the 21 day safe-harbor period is procedurally defective and as such, cannot be allowed. *Brickwood Contractors, Inc. v. Datant Engineering, Inc.*, 369 F.3d 385, 389 (4th Cir. 2004) ("[F]ailure to comply with the procedural requirements precludes the imposition of the requested sanctions").[2]

5. Moreover, the Movant filed the Combined Pleading and sanction motion on May 12, 2005. On June 8, 2005, a date outside the 21-day safe harbor provision but prior to the hearing on the Debtor's objection to the Movant's proof of claim, the Debtor sought to withdraw his objection.

6. In light of the above analysis it is apparent that the Reconsideration Motion is frivolous. It is clear that the moving party did not read Fed. R. Bankr. P. 9011 or does not comprehend the difference between filing and service. It is even more clear that the moving party did not realize that the exception under Fed. R. Bankr. P. 9011 (c)(1)(A) concerning violations of subdivision (b) applies specifically to the filing of "petitions",

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[1] Fed. R. Bankr. P. 9011 was amended in 1997 to conform it to the 1993 Amendments to Fed. R. Civ. P. 11.

[2] The Court also notes that the Movant apparently misunderstands the requirement that a request for sanctions be made by separate motion. The Movant combined his request for sanctions with a response and opposition to the Debtor's objection to the Movant's claim in one pleading (the "Combined Pleading")[Docket #75]. Then, in addition to the Combined Pleading, the Movant filed a separate motion for sanctions which merely reiterates the sanction portion of the Combined Pleading.

which are defined in 11 U.S.C. §101 (42) (" 'petition' means petition filed under section 301, 302, 303 or 304 of this title..."). To file pleadings such as this Reconsideration Motion and non-compliant requests for sanctions wastes both counsels' and the Court's time and resources and may well be sanctionable.

7. Furthermore, this is not the first time this counsel has not complied with the procedural requirements laid out by the Federal Rules of Bankruptcy Procedure or the Massachusetts local Bankruptcy Rules. The Court cautions counsel to familiarize himself with the correct procedural practices; continued flouting of the rules in the future will cause counsel to show cause why he should not be sanctioned.

Due to the deficient nature of the Motion, the Motion is hereby STRICKEN.

Dated: June 24, 2005

Joel B. Rosenthal
United States Bankruptcy Judge.